



## **Proposal around the situation with Ray (Dennis) Ferguson**

This proposal was put to the NSW Government on 23/9/09. The government has an urgent high level review of their procedures that could result in more discrimination and difficulty for our communities. Legislation is being considered. <<http://www.news.com.au/story/0,27574,26099737-29277,00.html>>

This is a chance for the government to do and be seen to have done something positive in line with international best practice. We have the support of some child protection groups and survivors of child abuse organizations, and have consulted nationally and internationally.

There is a significant analysis of sex offending on the home page of our website. <http://www.justiceaction.org.au/> Four Corners, the leading ABCTV hour long program, is committed to doing a program and Ray (Dennis) Ferguson is working with them now. After that we will introduce him to the public. He is one of our strengths. Let's move in and offer something new. This is an opportunity for change.

## **A Proposal for the treatment of sex offenders, their victims and their communities.**

### **The community is entitled to be safe and feel safe from the threat of sexual attack, and understand the issues around sex offending.**

Sex offending is part of our communities' behaviour. The rate is enormous - 1:4 women and 1:8 men are abused, and it isn't being properly handled.

Mostly sex offending is happening within families (90%) and mostly the offenders aren't known to the police (95%). That has nothing to do with Ray (Dennis) Ferguson. In fact the more hysteria around him and stranger danger, the less likely it is that the children who are currently being abused will ask for help. They fear they won't be believed and they also realise their family member, their family and themselves will be utterly destroyed. The abuser often has significant functions in the family.

Currently the criminal justice system and the child protection agencies have failed victims, offenders, and the communities of interest surrounding each person. Authorities rely on imposing force rather than facilitating solutions. That alienates community support. More so with Indigenous Australians, but still among non-Indigenous people, there is a reluctance to report to agencies that don't have their trust or respect. Many children grow up fearing the police and have already experienced the hand of authority over their family.

### **People who have sexually offended**

These people are not unusual human beings. Almost all of them consider their offending against children as reprehensible and inexplicable and 80% say they wouldn't have offended if they had known where to go for help to address the problem without ruining the lives of their families as well as their own. Many are suicidal even before disclosure of offending and many actually commit

Trades Hall, Suite 204, 4 Goulburn St,  
Sydney NSW 2000, Australia  
PO Box 386, Broadway NSW 2007, Australia

ph: 612 9283 0123 fax: 612 9283 0112  
email: [ja@justiceaction.org.au](mailto:ja@justiceaction.org.au)  
[www.justiceaction.org.au](http://www.justiceaction.org.au)

suicide when charges are first laid.

Statistics show that the vast majority (93%) of child sex offenders were sexually abused as children themselves. Our proposed court, through its focus on the medical and psychological needs of both perpetrators and victims, would substantially reduce the incidence of such offending. The needs of the latter are not currently addressed in any systematic way. Such a court could also address the issues of intergenerational trauma (stolen generation, war trauma, previous abuse) so that the present generation can be provided with programs to address their own behaviour. Without this we will not break the cycle of abuse and re-offending. Reducing neutralization and increasing the capacity of the offender to take greater responsibility is what is required to break the cycle.

Statistics also clearly demonstrate that with sex offences, the reoffending rate is lower than almost every other crime. But the people who offend are treated extremely harshly by the criminal justice system and increasingly excluded from the community after accepting their punishment. In the internet age, they are forever shamed, incapable of change and unlikely to ever be able to live as free citizens in Australia. That discrimination is damaging to their prospects for rehabilitation and community reconciliation. The hysteria is destructive to the feeling of community safety, and serves no useful purpose at all. It encourages the worst sort of bullying and feelings of vengeance in the community against individuals, legitimising vigilante responses. This blocks complaints and assistance to others being sexually abused.

### **Creation of a Sexual Offences Court**

It would require the establishment of trust, sensitive social workers, treatment services for all family members, community support, and appropriate court intervention. It requires privacy legislation in place, and not the police as the first call. Therapeutic jurisprudence is the answer combined with a communitarian model of restorative justice.

The court would not only be staffed by judges and lawyers etc, but also by counsellors, clinical psychologists, forensic psychiatrists and other support services including community representatives, in the same way that the Family Court is currently staffed.

There would be a prohibition against identifying either victims or offenders. There is already a prohibition against identification of victims (including the publication of offenders' names where publication would identify victims), under s578A of the Crimes Act 1900. That means the change to the legislation would be minor, but would prevent lifelong vilification, exclusion and disturbance to the community.

The court would have four primary roles:

- 1) the welfare of the victim including any medical/psychological help they may need.
- 2) the welfare and stability of the family unit would be the starting point where sex offences occurred within the family. Consideration to be given to the best interests of all the family members including the victim and the offender. The family to be provided with counselling and support with safety provisions against re-offending.

The family needs to be encouraged to become involved in therapy, in a voluntary capacity, for it is often the case that a family member may be neutralizing the responsibility-taking of the perpetrator. Many International agencies require that the offender voluntarily move out of the

house whilst undergoing treatment, finding accommodation with other family members, but still spending time with the family.

3) the treatment of the person committing the offence through appropriate psychological and psychiatric services and the provision of counselling and support to all family members, children and adults. For offences occurring within the family, there would be an assumption that unless there is strong evidence to the contrary, the person should be returned to the family unit if possible after taking family members wishes and safety into consideration. The treatment program should be focused on support for the whole family.

The communitarian model of restorative justice has the sentencing/healing circles made up of as many of the victim and offenders parties, as well as their personal support and communities of interest. Statutory bodies that can assist join the main circles, whereas regulatory agencies such as police and child protection only have limited access to the circles, mostly when the hard work and future plans are complete.

There are some good international models for this, mainly in indigenous communities in New Zealand, Canada, the USA and Belgium. In particular Hollow Water in Canada, STOP in Christchurch, and SAFE in Auckland and Wellington all have elements of international best practice; and

Incorporate 'Circle of Accountability' programs which offers them a network of support to prevent their reoffending. More information on these programs can be found at:

<http://www.communitycare.co.uk/Articles/2008/11/07/109885/circles-shape-sex-offenders-lives-on-the-outside.html>

<http://www.circles-uk.org.uk/>

<http://chhs.gsu.edu/safecare/>

[http://www.childwelfare.gov/famcentered/services/safe\\_care.cfm](http://www.childwelfare.gov/famcentered/services/safe_care.cfm)

4) taking into account the above principles, a penalty for the person who committed the offence.

Where the person committing the offence is imprisoned, the following principles should apply:

- if sent to prison, the person should be managed at all times with an eye to release and a focus on re-entry into society. In particular they should be given access to appropriate programs in time for them to seek release on parole;
- it be recognised that successful re-entry involves the rehabilitation of the person who offended as the principal means of making a safer community. Based on this principle, all reasonable steps should be taken to assist the person reintegrate by giving them full access to appropriate programs and support services which commence whilst they are in prison and continue seamlessly on their release;
- whilst a person is in prison, and continuing after their release, there must be a prohibition against any actions that may serve to publicly stigmatise the person concerned. Such actions only raise the risk of isolating the former offender raising the prospect of re-offending;
- that post release supervision include the Circle of Accountability programs.